

1 A. Yes. In my opinion, the use of the phrase "reasonable and necessary"
2 indicates a legislative intent that those words be interpreted as they have
3 been for the past 30 years in the context of setting a utility's revenue
4 requirement in rate cases. Specifically, under PURA § 36.051, the
5 Commission is required to establish a utility's overall revenues at an
6 amount that will allow a utility a reasonable opportunity to earn a
7 reasonable return on its invested capital that is used and useful in
8 providing service to the public in excess of its *reasonable and necessary*
9 operating expenses. Since PURA was enacted, utilities have always been
10 required to demonstrate that their expenditures are "reasonable and
11 necessary." See, e.g., Tex. Rev. Civ. Stat. Ann. art. 1446c, § 39(a), Public
12 Utility Regulatory Act, 64th Leg., R.S., ch. 721, 1975 Tex. Gen. Laws 2327,
13 *repealed by* Act of April 5, 1995, 74th Leg., R.S., ch. 9, § 2(a), 1995 Tex.
14 Gen. Laws 88 (PURA75). The reasonable and necessary test has
15 historically been the standard for review of a utility's revenue requirement
16 and there are many decisions of this Commission and of the Texas courts
17 relying upon and explaining this standard. The TTC expenditures made by
18 EGSI that I have reviewed and which EGSi seeks to recover in this
19 proceeding are similar to what is commonly referred to as "rate case
20 expenses," which are those expenditures incurred by a utility, and often
21 times by municipalities, in litigating rate changes. Rate case expenses
22 and TTC expenditures are part of a utility's "operating expenses" as that

1 term is used in PURA § 36.051, which sets the same "reasonable and
2 necessary" standard as PURA § 39.454.

3

4 Q. DO YOU ADDRESS IN YOUR TESTIMONY THE PROVISION OF
5 SECTION 39.454 THAT STATES THAT THE EXPENDITURES TO BE
6 RECOUPED MUST HAVE BEEN MADE TO COMPLY WITH CHAPTER
7 39 OF PURA?

8 A. No. That issue will be addressed by Company witness Phillip R. May and
9 other Company witnesses in their direct testimony.

10

11 Q. PURA 39.454 ALSO LIMITS EGSi'S RECOVERY TO COSTS THAT
12 HAVE NOT OTHERWISE BEEN RECOVERED. ARE YOU TESTIFYING
13 ABOUT THAT ISSUE?

14 A. No. Company witness J. David Wright testifies on that issue.

15

16 Q. WHAT STANDARD MUST BE MET FOR RECOVERY OF THE RATE
17 CASE EXPENSES THAT THE COMPANY SEEKS TO RECOVER IN
18 THIS PROCEEDING?

19 A. The Austin Court of Appeals noted in *City of El Paso v. Pub. Util. Comm'n*
20 *of Tex.*, 916 S.W. 2d 515, 522 (Tex. App.—Austin 1995, judgment vacated
21 and writ dismissed by agreement) that a utility's requested rate case expenses will
22 be reimbursed if the Commission finds them to be reasonable. In the *El*
23 *Paso* case, the Commission took the position that "its determination of

1 reasonableness is analogous to the trial court's determination of the
2 reasonableness of attorney's fees and costs of litigation and includes
3 consideration of factors such as: (1) time and labor required; (2) nature
4 and complexities of the case; (3) amount of money or value of property or
5 interest at stake; (4) extent of responsibilities the attorney assumes; (5)
6 whether the attorney loses other employment because of the undertaking;
7 and (6) benefits to the client from the services." *El Paso* at 522, citing
8 *Nguyen Ngoc Giao v. Smith & Lamm, P.C.*, 714 S.W. 2d 144, 148-149
9 (Tex. App. – Houston [1st Dist] 1986, no writ). The Court noted, assuming
10 the *Smith & Lamm* factors govern the Commission's determination of
11 reasonableness of requested expenses, that the Commission "may
12 consider other factors in addition to or in place of the *Smith & Lamm*
13 factors." The record in the *El Paso* case contained evidence of the nature
14 and complexity of the two prior docket cases, the responsibilities attorneys
15 and consultants assumed, and the amount of money charged for attorney
16 and consultant services." *Id.* at 522-523.

17

18 Q. PLEASE EXPLAIN HOW YOU DETERMINED THE REASONABLENESS
19 AND NECESSITY OF THE COSTS THAT YOU REVIEWED?

20 A. In arriving at an opinion on the reasonableness and necessity of the
21 various expenditures which I reviewed, which include attorneys' and
22 consultants' fees and expenses, as well as vendors who provide services
23 that are not generally billed on an hourly basis, I consulted with the lead

1 attorneys who billed time to this matter to ensure I was familiar enough
2 with the numerous proceedings for which time was billed to enable me to
3 form an opinion on reasonableness and necessity. Based upon my
4 experience in the utility law field over the past 19 years, I am familiar with
5 many of the local counsel and many of the consultants whose time I
6 reviewed. I also undertook to investigate each professional time billing
7 vendor to determine their qualifications and what responsibilities they had
8 for the services provided and for which recovery of expenditures is sought
9 in this proceeding. With respect to vendors with whom I was not familiar, I
10 discussed their roles in the TTC proceedings with local counsel, and I also
11 researched many of the law firms through readily available means, such
12 as Martindale Hubbell, which often lead me to the firms' websites. In that
13 manner I was able, for instance, to determine that Mr. Williams with the
14 Little Rock firm of Williams & Anderson, who provided legal services
15 associated with implementation of the securitization provisions of SB 7, is
16 a founding member of the National Association of Bond Lawyers and the
17 American College of Bond Attorneys. It is information of that nature which
18 assisted me in determining that he possesses appropriate qualifications to
19 provide legal services to EGSI in that phase of the transition to
20 competition proceedings. When something was unclear from an invoice, I
21 resolved my questions by obtaining information from the Company or one
22 of the Company's local counsel. I also reviewed information available on
23 the PUC Interchange, including the docket sheets to determine the timing

1 of events as well as reading or skimming numerous, although certainly not
2 all, of the pleadings, orders, testimony, and discovery documents, in the
3 numerous PUC proceedings in which EGSi was involved, in order to
4 familiarize myself with the proceedings and the work performed by various
5 vendors on EGSi's behalf and ultimately to enable me to form an opinion
6 in this proceeding. The opinions I formulated which are expressed in this
7 testimony are based upon the following specific determinations: (a) the
8 individual charges and rates are reasonable (e.g., by comparison with the
9 usual charges for similar services); (b) the amount of each service is
10 reasonable (e.g., hours billed); (c) the calculation of the charges is correct;
11 (d) there is no double-billing of charges; (e) none of the charges have
12 been recovered through reimbursement for other expenses (e.g., invoices
13 were not paid twice); (f) none of the charges have been assigned to other
14 jurisdictions; and (g) any allocation of charges between jurisdictions is
15 reasonable. *See Application of El Paso Electric Company for Authority to*
16 *Change Rates*, Docket No. 8363, 14 P.U.C. BULL. 2834, 2977-78 (May 5,
17 1989).

18 Finally, I considered whether the work performed was relevant and
19 reasonably necessary to the proceeding for which it was performed, and
20 whether the complexity and expense of the work was commensurate with
21 the complexity of the issues in the particular proceeding.

22

1 Q. PLEASE DESCRIBE THE CRITERIA YOU USED TO REVIEW THE
2 "EXPENSES" AND FEES PAID BY EGSi FOR THE SERVICES OF THE
3 VENDORS WHOSE INVOICES YOU REVIEWED?

4 A. I specifically reviewed all of the invoices to determine whether the
5 expenses charged reflect any of the following criteria:

- 6 • Billings by any time-biller in excess of 12.0 hours per day;
- 7 • Higher-than-normal charges for routine out-of-pocket costs, such as
- 8 copying/reproduction, facsimile transmittals, postage, and couriers;
- 9 • Hourly fees higher than the rates agreed upon;
- 10 • Duplicate billings;
- 11 • The use of non-commercial aircraft or first-class air travel;
- 12 • Luxury items such as limousine service, sporting events, alcoholic
- 13 drinks, hotel movies, hotel laundry or dry cleaning, or other
- 14 entertainment; or
- 15 • Meals costing in excess of \$25.00 per person per meal.

16

17 Q. DO YOU BELIEVE THAT ANY EXPENSE THAT FAILS TO COMPLY
18 WITH ANY OF THE CRITERIA YOU JUST RECITED SHOULD BE
19 DISALLOWED?

20 A. Not necessarily. In my initial review of the expenses and fees, I applied
21 these criteria for purposes of conducting an initial screening of the
22 reasonableness of the claimed expenses. Where an expense item

1 contravened or appeared to contravene any one of these criteria, I then
2 sought additional information to determine whether the expenditure in
3 question was in fact reasonable or not. My observations on each of these
4 criteria as I applied them to each of the vendors are discussed in the
5 following sections of my testimony.

6

7 Q. PLEASE EXPLAIN THE MANNER IN WHICH YOU UNDERTOOK YOUR
8 EVALUATION OF THE REASONABLENESS OF INVOICES THAT
9 CONTAINED TIME ENTRIES?

10 A. I first reviewed the time entries to determine whether the level of billing
11 detail was sufficient for me to understand the nature of the activities on
12 which each time-biller's time had been expended.

13

14 Q. DID YOU FIND THE LEVEL OF BILLING DETAIL SUFFICIENT?

15 A. Not always. The level of detail provided by the various lawyers and
16 consultants varied considerably. For the lawyers, the level of detail was
17 sufficient for me to gain a reasonable understanding of the nature of the
18 work being undertaken by each time-biller on behalf of the Company. It
19 was also generally sufficient to permit me to formulate an opinion as to the
20 reasonableness of the time expended. In some instances, particularly for
21 time entries reflecting more than 12.0 hours per day, the billing detail was
22 insufficient for me to determine if the work met the higher standard of
23 review. Unfortunately, in some of those instances where the detail was

1 insufficient, I found that the attorney was no longer associated with the
2 firm and so I was unable to obtain additional information to allow me to
3 determine reasonableness. In those circumstances, my recommendation
4 of disallowance is reflected on the attached exhibits and explained in more
5 detail below.

6

7 Q. IN YOUR OPINION SHOULD TIME-BILLERS ALWAYS DESCRIBE IN
8 DETAIL THE TIME SPENT ON EACH TASK UNDERTAKEN DURING
9 THE DAY ON BEHALF OF A CLIENT?

10 A. In my opinion, a time-biller should try to accommodate the level of billing
11 detail requested by the client, and in the matters for which recovery will be
12 sought from ratepayers, that level of detail should be sufficient to satisfy
13 the reasonable and necessary standard.

14

15 Q. WHAT ELSE DID YOU LOOK FOR WHEN REVIEWING TIME ENTRIES
16 FOR LAWYERS AND CONSULTANTS?

17 A. I evaluated the amount of time spent by the vendors in the context of the
18 scope and magnitude of the issues presented by the proceeding for which
19 time was being billed. My knowledge of the issues and the timing of the
20 issues in the dozen or so matters covered by these invoices was gleaned
21 from discussions with some of the vendors and review of docket sheets,
22 pleadings, orders, and discovery.

23

1 III ATTORNEYS/LEGAL

2 Q. WHAT CATEGORY OF EXPENDITURES DO YOU DISCUSS FIRST?

3 A. I will discuss expenditures for legal services. This will include three major
4 groups consisting of two Austin law firms – CTW (Clark, Thomas &
5 Winters) and Bickerstaff – and the GSU Steering Committee, which is
6 EGSI's reimbursement to Cities of their expenses, and then a fourth group
7 consisting of 19 law firms or legal services groups that provided TTC legal
8 services to EGSI.

9
10 Q. HOW DID YOU EVALUATE THE REASONABLENESS AND NECESSITY
11 OF THE CHARGES PAID BY EGSI TO THE LAW FIRMS WHOSE
12 INVOICES YOU REVIEWED?

13 A. This proceeding to recoup TTC costs is unique inasmuch as it
14 encompasses work performed over a five or six year span on dozens of
15 proceedings. Many of the attorneys involved in earlier proceedings are no
16 longer associated with the firms listed or no longer engaged by EGSI.
17 Accordingly, I did not interview each of the attorneys who billed time on
18 each of the matters reflected on the invoices. However, I know, or know
19 the reputation of, many of the Austin-based lawyers who billed time on the
20 invoices I reviewed. For those attorneys with whom I was not familiar, I
21 discussed with the Company or its attorneys, Messrs. Fogel, Neinast, or
22 Williams, the particulars of the attorney's engagement, and in many
23 instances I also reviewed the attorney's Martindale Hubbell listing and

1 their firm's website, if available. In the majority of the cases, I was able to
2 ascertain the hourly rates for each attorney and other time billers with a
3 firm from the invoices themselves. When the hourly rates were not
4 explicitly listed on an invoice, I was sometimes able to calculate the hourly
5 rate from the information provided. If that was not possible, I obtained the
6 information by asking someone with EGSI with personal knowledge of the
7 information I was seeking. In my experience, the rates for each attorney
8 for any particular matter are based upon consideration of the experience
9 and expertise of the attorney, the length of the relationship with the client,
10 the nature of the work, the status of the client, the location of the firm, and
11 the current and anticipated workloads of the law firm.

12

13 Q. DOES THE TIME PERIOD OVER WHICH THOSE COSTS WERE
14 INCURRED OR THE NUMBER OF PROCEEDINGS AFFECT WHETHER
15 THOSE COSTS ARE REASONABLE AND NECESSARY?

16 A. No. The costs that I reviewed were for work associated with specific
17 dockets, projects, and activities. I reviewed invoices for that work as
18 discrete activities. In formulating an opinion concerning the
19 reasonableness and necessity of EGSI's expenditures, I built the costs
20 from the ground up. In other words, rather than starting with the
21 Company's total expenditures and then determining which ones should be
22 excluded, I reviewed the costs to determine which ones were reasonable
23 and necessary and should be recovered by EGSI. Whatever the total

1 level of reasonable costs turned out to be, that is the number I recommend
2 in my exhibits. I do not think it is reasonable to view the rate case
3 expenses as one item because these expenses reflect separate cases
4 and tasks. Any discrete cost is not less reasonable or necessary simply
5 because there are a large number of proceedings to review or because
6 EGSI was in an extended transition period. PURA § 39.454 allows EGSI
7 to recover *all* reasonable and necessary expenditures incurred to comply
8 with the transition to competition provisions found in Chapter 39. In order
9 to faithfully implement that statutory provision, I do not believe the review
10 of these expenditures should be colored by the time span covered by this
11 case or the number of proceedings at issue.

12

13 A. Clark Thomas & Winters

14 Q. DID CLARK THOMAS & WINTERS PROVIDE LEGAL SERVICES TO
15 EGSI DURING THE TTC COST PERIOD?

16 A. Yes. Beginning in September 1999, CTW began providing services to
17 EGSI, the costs of which are the subject of this proceeding.

18

19 Q. HAVE YOU REVIEWED THE INVOICES FOR LEGAL SERVICES
20 PROVIDED BY CTW THAT THE COMPANY SEEKS TO RECOVER?

21 A. Yes. In preparation for testifying, I reviewed the invoices submitted to
22 EGSI by CTW for services rendered from September 1999 through
23 December 2004. Most of the CTW invoices I reviewed included multiple

1 client or billing matters. By "matters," I mean the name under which the
2 firm charged for the work done for the client, and which might include one
3 or more dockets or it may cover a general subject matter. The firm then
4 bills time and expenses to a particular matter.

5

6 Q. PLEASE LIST AND DESCRIBE THE MATTERS THAT CTW OPENED
7 FOR EGSi THAT WERE INCLUDED IN YOUR REVIEW?

8 A. CTW's invoices reflect work done on 14 matters, including:

- 9 1. "Separation Case," which ultimately became Docket 21957,
10 *Application of Entergy Gulf States, Inc. for Approval of Business*
11 *Separation Plan Pursuant to Subst. R. 25.272(b)(3)*, which is also
12 referred to as the BSP case (which was eventually consolidated
13 into Docket 22356, see below);
- 14 2. "T&D Rate Case," which included (a) Docket 22356, *Application of*
15 *Entergy Gulf States for Approval of Unbundled Cost of Service*
16 *Rate Pursuant to PURA § 39.201 and Public Utility Commission*
17 *Substantive Rule § 25.344*, which is also referred to as the UCOS
18 case, and (b) Docket 22344, *Generic Issues Associated with*
19 *Applications for Approval of Unbundled Cost of Service Rate*
20 *Pursuant to PURA Section 39.201 and Public Utility Commission*
21 *Subst. R. 25.344*, which is also referred to as the Generic UCOS
22 case;

- 1 3. "Contract Restructuring Issues," which concerned EGSI's efforts to
2 understand and determine the potential impact of retail open
3 access and unbundling on its existing bundled contracts, such as
4 the one between EGSI and The Woodlands;
- 5 4. "Pilot Project Eligibility Disputes," which included work on Docket
6 23838, *Entergy Gulf States, Inc. Notice of Pilot Project Eligibility*
7 *Dispute with Betzdearborn Pursuant to Subst. R. 25.431(c)(4)*;
- 8 5. "Power Region Qualification Issues," which included work on
9 Docket 24309, *Application of Entergy Corporation for Certification*
10 *of the Southwest Power Pool as a Power Region Pursuant to*
11 *PURA § 39.152*, as well as work associated with EGSI's efforts to
12 obtain Federal Energy Commission Approval ("FERC") approval for
13 a Regional Transmission Operator ("RTO") in order to meet the
14 qualifying power region standards under PURA § 39.152;
- 15 6. "Capacity Auction," which included work on Project 23774, *PUC*
16 *Proceeding to Implement the Capacity Auction Rule* and Project
17 24492, *PUC Rulemaking Proceeding to Revise Substantive Rule*
18 25.381, *Capacity Auctions*;
- 19 7. "State Tax Matters," which included work related to tax effects of
20 unbundling and restructuring the utility;
- 21 8. "True-Up Rulemaking," which was Project No. 23571, *Rulemaking*
22 *Proceeding Concerning True-Up Proceedings Under PURA §*
23 39.262;

- 1 9. "Tariff Revision" and "Pulse Metering," which related to Project No.
2 22187, *Rulemaking to Establish Terms and Conditions of*
3 *Transmission and Distribution Utilities' Retail Distribution Service*;
- 4 10. "QF Matters," which related to Project No. 24365, *Rulemaking*
5 *Concerning Arrangements Between Qualifying Facilities and*
6 *Electric Utilities*, addressing arrangements with such entities in light
7 of retail open access;
- 8 11. "Merger Savings Class Action," which involved a lawsuit filed by a
9 group of EGSI ratepayers. The history of that litigation begins in
10 1993 when Entergy Corporation ("Entergy") and Gulf States Utilities
11 Company ("GSU") merged. That merger was approved in Docket
12 11292, pursuant to a settlement agreement. The merger approval
13 order included the parties' agreement that savings resulting from
14 the merger would be shared 50/50 between the ratepayers and the
15 merged company's shareholders and that the savings would be
16 determined in three rate cases that would be filed in 1996, 1998,
17 and 2001. Two of the rate cases were filed prior to the passage of
18 SB 7. As part of EGSI's UCOS case, Docket 22356, Preliminary
19 Order (June 7, 2000), the Commission decided that PURA § 39.201
20 required a transmission and distribution ("T&D") rate case to be
21 filed by April 1, 2000, to implement rates and tariffs effective
22 January 1, 2002, and accordingly, EGSI would not be required to
23 file a rate case in November 2001 pursuant to the Docket 11292

1 Order. Subsequently, the class action was initiated by certain
2 ratepayers who alleged that EGSI's failure to file the third rate case
3 as contemplated by the Commission's order in Docket 11292
4 constituted a breach of the settlement agreement. EGSI defended
5 against the suit and, ultimately, the Texas Supreme Court granted a
6 writ of mandamus on the basis that the Commission has exclusive
7 jurisdiction over the subject matter of the dispute. *In re Entergy*
8 *Corporation*, 142 S.W. 3d 316 (Tex. 2003);

9 12. "REP Matters" covered work on Protocols for SERC, Project 25089;

10 13. "Texas Rate Case" covered work on Docket 30123, *Application of*
11 *Entergy Gulf States, Inc. for Authority to Change Rates and to*
12 *Reconcile Fuel Costs*; and

13 14. "Rate Freeze Termination," which concerned issues raised in 2004
14 about the Commission's decision in Docket 24469, *Staff's Petition*
15 *to Determine Readiness for Retail Competition in the Portions of*
16 *Texas within the Southeastern Reliability Council*, to freeze EGSI's
17 base rates, Order (Dec. 20, 2001).

18

19 Q. DID YOU REVIEW ANY MATERIALS OTHER THAN THE INVOICES IN
20 PREPARING YOUR TESTIMONY?

21 A. Yes. As I've previously testified, I examined in varying levels of detail, the
22 docket sheets and particular filings (orders, pleadings, discovery matters)
23 in the numerous PUC proceedings listed above in order to ascertain the

1 necessity for work performed. I also discussed with Mr. John Williams, a
2 partner at CTW, some of the issues that impacted the costs of services
3 provided by CTW.

4 Q. DID YOU PREPARE A SUMMARY OF THE CTW INVOICES THAT YOU
5 REVIEWED?

6 A. Yes. It is attached as Exhibit JKT-2

7

8 Q. PLEASE EXPLAIN HOW EXHIBIT JKT-2, THE SUMMARY OF THE CTW
9 INVOICES, IS ARRANGED.

10 A. The summary is in matrix form and is presented in order by the date the
11 services were provided. The first column indicates the date of the invoice,
12 and the second column of Exhibit JKT-2 indicates the bates range where
13 the invoice can be found. The next five columns identify, in turn, the
14 dates of service reflected on each invoice, the matter name, total fees
15 charged, total expenses, and the total amount of the invoice. Any
16 disallowances I recommend are noted in the fees, expenses, and total
17 columns. The final column contains notes explaining, as applicable, what
18 the billing matter involved, exclusions suggested to me by EGSi,
19 disallowances recommended by me with an explanation of the reason
20 therefore, and items of particular interest, including time entries in excess
21 of 12.0 hours per day.

22

1 Q. DID YOU PREPARE A DOCUMENT THAT SHOWS THE HOURLY
2 RATES CHARGED BY CTW ATTORNEYS AND OTHER TIME BILLERS?

3 A. Yes. That is attached as Exhibit JKT-3.
4

5 Q. PLEASE EXPLAIN WHAT EXHIBIT JKT-3 SHOWS?

6 A. Exhibit JKT-3 lists the CTW timebillers, including attorneys and paralegals,
7 who billed time on the CTW invoices which I reviewed. As you can see,
8 the hourly rates changed over time and I tried to capture the month and
9 date in which new hourly rates were reflected. So, for example, Mr.
10 Williams' hourly rate was \$175 in October 1999, \$210 in December 2000,
11 \$220 in July 2002, and \$250 in February 2003.
12

13 Q. DID YOU FORM AN OPINION CONCERNING THE REASONABLENESS
14 OF THE HOURLY RATES CHARGED BY CTW TO EGSi FOR THE
15 MATTERS INCLUDED IN THE INVOICES YOU REVIEWED?

16 A. Yes. In my opinion, the hourly rates charged by CTW on the EGSi
17 matters which I reviewed were reasonable, considering the expertise and
18 experience of legal counsel and their staff, and the rates are comparable
19 to rates charged during the same time frame by other lawyers in Texas
20 who represent utilities in proceedings before the Commission. CTW has a
21 long-standing relationship with EGSi and, before that, with GSU, including
22 representing GSU in base rate and fuel proceedings before the
23 Commission, as well as in related court proceedings, and representing the

1 Company in, for example, various fuel reconciliation or fuel factor
2 proceedings and related court proceedings. In my experience, the rates
3 for each attorney for any particular matter are based upon consideration of
4 the experience and expertise of the attorney, the length of the relationship
5 with the client, the nature of the work, the status of the client, and the
6 current and anticipated workloads of the attorneys. In many of the matters
7 reflected on the CTW invoices which I reviewed, EGSi carried a significant
8 burden of proof, work often had to be performed within a relatively
9 compressed timeframe required by PURA, and CTW had an ample
10 amount of work for other clients during the time period covered by the
11 invoices.

12

13 Q. DID YOU FIND ANY INSTANCE IN WHICH A TIME-BILLER BILLED IN
14 EXCESS OF 12.0 HOURS IN ANY ONE DAY AND, IF SO, WHAT DO
15 YOU RECOMMEND BE DONE WITH THE FEES ASSOCIATED WITH
16 THAT TIME?

17 A. Yes. I found billing entries where attorneys with CTW billed in excess of
18 12.0 hours in one day in a dozen of the invoices I reviewed. These are
19 listed in the "Notes" column of Exhibit JKT-2. Time entries of more than
20 12.0 hours in a day are cause for closer scrutiny but not necessarily
21 disallowance. There is no doubt that the time entries accurately reflect
22 time actually spent on the work described in the invoices. A higher
23 standard is applied to time entries reflecting 12.0+ hours per day, which

1 should occur only in extraordinary circumstances, in order to assess the
2 necessity for the work. The CTW time entries themselves describe the
3 work performed in sufficient detail to allow me, by cross-referencing the
4 docket sheets for the particular matters, to satisfy myself that the long
5 hours were necessary to represent EGSI's interests in the proceedings
6 indicated. In my experience in preparing for and appearing at hearings,
7 and especially when representing the party with the burden of proof, it is
8 not uncommon for the attorneys and the witnesses to work in excess of
9 12.0 hours on some days in order to either prepare a case with testimony
10 for filing, meet deadlines for responding to discovery, review and file
11 objections to other parties' testimony, participate in depositions, prepare
12 rebuttal testimony, or prepare for and attend and represent the client in
13 prehearings and hearings on the merits. I have listed the details
14 associated with each time entry that exceeded 12.0 hours in a day on
15 Exhibit JKT-2. Based upon my review of the work performed in the
16 proceedings indicated, I recommend no disallowances for these CTW time
17 entries.

18

19 Q. DID YOU FIND ANY INSTANCES IN WHICH AN HOURLY RATE WAS
20 CHARGED THAT WAS HIGHER THAN THE AGREED-UPON RATE?

21 A. No.

22

1 Q. DID YOU FIND ANY INSTANCES IN WHICH THE COMPANY WAS
2 CHARGED MORE THAN ONCE FOR A SERVICE?

3 A. No.
4

5 Q. WHAT DID YOU LEARN ABOUT THE OUT-OF-POCKET EXPENSES
6 SUCH AS TRAVEL EXPENSES AND COPYING CHARGES?

7 A. CTW charged \$0.20 per page for copying during most of the time period
8 covered by these invoices. In my opinion, that is within the range of
9 reasonableness for copying charges collected by law firms for utility
10 matters during the time period covered by these invoices. By way of
11 example, I presented expert testimony in support of Cap Rock Energy
12 Corporation's rate case expenses in Docket 22813, and Lloyd Gosselink's
13 \$0.20 charge per page for copying was found to be reasonable in that
14 proceeding. Beginning in May 2004, CTW reduced its copying charge to
15 \$0.10 per page, at EGSI's request. Obviously, I find that lower rate is also
16 within the range of reasonableness of such costs.

17 As to travel-related expenses, I reviewed the detailed invoices
18 provided by CTW to confirm that travel-related expenditures paid by EGSI
19 did not include non-commercial aircraft, first-class air travel, limousine
20 services, hotel movies, hotel laundry/dry cleaning, alcoholic drinks, or
21 meals costing in excess of \$25.00 per person per meal. In those rare
22 instances where I found an expense that did not conform to these criteria,
23 I made an adjustment, which is reflected on Exhibit JKT-2. For example

1 on the February 16, 2001 invoice for T&D Rate Case (Bates 696-735), I
2 recommended a disallowance of \$15.06 for the cost of a meal that
3 exceeded \$25.00 per person.

4

5 Q. DID YOU UNDERTAKE ANY FURTHER REVIEW OF OUT-OF-POCKET
6 EXPENSES?

7 A. Yes. I examined the expenses claimed by CTW to determine whether the
8 incurrence of any expense was unnecessary.

9

10 Q. DID YOU FIND ANY INSTANCE OF UNNECESSARY EXPENSES?

11 A. No. I found that travel was clearly associated with the need to confer and
12 meet with the client or its support services affiliate, whose corporate
13 headquarters are located in New Orleans, Louisiana. Travel is reasonably
14 expected and necessary in matters in which the law firm, company, and
15 consultants reside in different cities. With respect to photocopy, telephone
16 charges, and other out of pocket expenses, I found nothing that would
17 lead me to believe that CTW was billing an excessive number of
18 photocopies, or for long distance calls. I concluded that expenses
19 associated with copies, long distance, facsimiles, and the like were
20 reasonable.

21

22 Q. ARE THERE ANY TIME-BILLERS AT CTW OTHER THAN ATTORNEYS
23 THAT WERE INVOLVED IN ANY OF THE PROCEEDINGS?

1 A. Yes. CTW employs paralegals and a law librarian who billed time to EGSI
2 as reflected on the invoices I reviewed. The hourly rates for those
3 paralegals and other time billers are listed on Exhibit JKT-3 and range
4 from \$65 to \$100 per hour. During the TTC cost period, CTW used its
5 paralegals for a variety of activities related to attorney and hearing
6 support. These activities included, but were not limited to: (1) document
7 research and retrieval at the Commission, other regulatory agencies, and
8 courts; (2) document and file management, particularly in connection with
9 discovery and other aspects of complex agency contested proceedings
10 and related court cases; (3) research of PUC and other regulatory agency
11 precedents; (4) support for preparation of attorney participation in
12 contested case hearings, such as assistance with preparation of exhibits
13 and cross examination; (5) maintenance of exhibits and other
14 components of the administrative record during the course of contested
15 case hearings and related court proceedings; and (6) assistance in
16 preparing briefs and other pleadings, including locating record references
17 and conducting cite checks. This use is cost-effective since, given the
18 degree of knowledge and expertise needed to properly perform these
19 tasks, the alternative would be to use attorneys, at a higher hourly cost. I
20 examined each paralegal's time entries for the same criteria I employed to
21 review the attorneys' billable entries. Based upon my review of these
22 CTW time-billers other than attorneys, I conclude that their assistance was
23 necessary to the representation of EGSI in the matters involved, added

1 economic efficiency to the legal representation, and was reasonable and
2 necessary.

3

4 Q. ARE THE HOURLY RATES CHARGED BY CTW FOR PARALEGALS
5 REASONABLE?

6 A. The hourly rates for the CTW paralegals is comparable to rates charged
7 by other firms for the services of paralegals, are neither high nor out-of-
8 the-ordinary and are, in my opinion, quite reasonable.

9

10 Q. ARE THE HOURLY RATES FOR THE CTW ATTORNEYS REFLECTIVE
11 OF THE GOING RATE FOR ATTORNEYS IN AUSTIN INVOLVED IN
12 THE PRACTICE OF UTILITY LAW AT THE TIMES INDICATED ON THE
13 INVOICES?

14 A. Yes. The hourly rates charged by each of the attorneys reflected on
15 Exhibit JKT-3 are well within the range of rates charged by lawyers with
16 comparable experience in proceedings before this and other utility
17 regulatory commissions. Based upon the level of expertise of each of the
18 attorneys who worked a significant amount of time on this matter for the
19 Company, which I describe below, the hourly rates charged by CTW
20 attorneys are reasonable.

21 • Walter Demond has practiced in the administrative law area for 29
22 years and began working on utility matters in 1976. He is a senior
23 shareholder in CTW's Energy and Telecommunications section. He

- 1 has served in various capacities on the Public Utility,
2 Communications and Transportation section of the American Bar
3 Association, including Chair of the Natural Gas Committee (1991-
4 1994). He has been recognized as among the nation's best utility
5 lawyers by publications such as Corporate Counsel and Who's Who
6 In American Law.
- 7 • Casey Wren has been practicing in the administrative law area for
8 25 years and began working on utility matters in 1979. He is a
9 shareholder in CTW's Energy and Telecommunications section. He
10 was a member of the Texas Law Review (1977-1978) and a past
11 council member and Co-Chair of the Electricity Committee of the
12 American Bar Association's Public Utility, Communications and
13 Transportation Committee.
- 14 • John Williams has been practicing in the administrative law area for
15 18 years and began working on utility matters in 1987. He is a
16 shareholder in CTW's Energy and Telecommunications section. He
17 was Chairman of the Southwest Travis County Water District (1996-
18 2000). He is board certified in administrative law by the Texas
19 Board of Legal Specialization.
- 20 • Kerry McGrath has been practicing in the administrative law area for
21 16 years and began working on utility law matters in 1990. He is a
22 shareholder in CTW's Energy and Telecommunications section.
23 Prior to joining CTW, he was a briefing attorney for the Third District

- 1 Court of Appeals (1985-1986), a Texas appellate court specializing
2 in the resolution of administrative law cases. He has written
3 scholarly articles on the practice of administrative law.
- 4 • James McNally, Jr. has been practicing in the administrative law
5 area for fifteen years and began working on utility matters in 1990.
6 His is a shareholder in CTW's Energy and Telecommunications
7 section. He graduated from the University of Houston Law School
8 as a member of the Order of the Coif. He also holds a Master of
9 Public Accounting degree.
 - 10 • Eddie Pope has been practicing in the administrative law area for
11 28 years and began working on utility law matters in 1977. He is of
12 counsel in CTW's Energy and Telecommunications section. He
13 was formerly Chief of Staff and Legal Counsel to Commissioner
14 Robert W. Gee, Texas Public Utility Commission (1994-1997). He
15 was also formerly Deputy General Counsel –
16 Telecommunications/Deputy General Counsel – Electric, for the
17 Texas Public Utility Commission (1984-1987).
 - 18 • Bret Slocum has been practicing in the administrative law area for
19 22 years and began working on utility law matters in 1982. He is a
20 shareholder in CTW's Energy and Telecommunications section. He
21 formerly held several positions of increasing responsibility with the
22 Public Utility of Commission, including Assistant General Counsel

1 (1982-1985), Deputy General Counsel over Electric Matters (1985-
2 1995), and Division Director Legal Division (1995-2001).

3 • Mark Strain has been practicing in the administrative law area for 12
4 years and began working on utility matters in 1992. He is a
5 shareholder in CTW's Energy and Telecommunications section.
6

7 Q. BASED UPON YOUR REVIEW OF THE CTW INVOICES, DO YOU
8 HAVE AN OPINION AS TO THE REASONABLENESS AND NECESSITY
9 OF EGSI'S EXPEDITURES PAID TO THAT LAW FIRM?

10 A. Yes. In my opinion, the fees and expenses for CTW legal services for
11 which EGSI seeks recovery in this case, less the disallowances reflected
12 on Exhibit JKT-2, are reasonable and necessary and EGSI should be
13 allowed to recoup them as provided for under PURA § 39.454.
14

15 B. Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.

16 Q. DID BICKERSTAFF PROVIDE LEGAL SERVICES TO EGSI DURING
17 THE TTC COST PERIOD?

18 A. Yes. Beginning in June 1999, Bickerstaff began providing services to
19 EGSI, the costs of which are the subject of this proceeding.
20

1 Q. HAVE YOU REVIEWED THE INVOICES FOR LEGAL SERVICES
2 PROVIDED BY BICKERSTAFF THAT THE COMPANY SEEKS TO
3 RECOVER?

4 A. Yes. In preparation for testifying, I reviewed the invoices submitted to
5 EGSi by Bickerstaff for services rendered from June 1999 through August
6 2002. Most of the Bickerstaff invoices I reviewed covered multiple billing
7 matters. A summary of the Bickerstaff invoices I reviewed is presented in
8 matrix form as Exhibit JKT-4.

9
10 Q. PLEASE LIST AND DESCRIBE THE CLIENT MATTERS THAT
11 BICKERSTAFF OPENED FOR EGSi WHICH WERE INCLUDED IN
12 YOUR REVIEW?

13 A. Bickerstaff's invoices reflect work performed and billed under 11 client
14 matters, which are:

- 15 1. "SB 7," which covered a multitude of projects, rulemakings, and
16 proceedings at the PUC and ERCOT, necessitated by SB 7;
- 17 2. "April Filing," which covers work performed on what became Docket
18 22356, *Application of Entergy Gulf States for Approval of*
19 *Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and*
20 *Public Utility Commission Substantive Rule § 25.344*, which is also
21 referred to as the UCOS case;
- 22 3. "Docket 21957," which includes work on that Docket, which is
23 styled *Application of Entergy Gulf States, Inc. for Approval of*

- 1 *Business Separation Plan Pursuant to Subst. R. 25.272(b)(3),*
2 which is also referred to as the BSP case and which was eventually
3 consolidated into Docket 22356, *see above*;
- 4 4. "Docket 21984," which covers work performed for that Docket,
5 which is styled *Competitive Energy Services Issues Severed from*
6 *Application of Entergy Gulf States, Inc. for Approval of Business*
7 *Separation Plan Pursuant to Subst. R. 25.272(b)(3), Docket No.*
8 *21957*;
- 9 5. "Transco/Disco IO," which involved EGSI's efforts to establish an
10 Independent Organization within its Texas service area pursuant to
11 PURA § 39.151;
- 12 6. "Retail," which covered work necessary to prepare EGSI for retail
13 open access;
- 14 7. "EWO," or Entergy Wholesale Operations, which included work
15 associated with unbundling, Price to Beat, and capacity auctions;
- 16 8. "Distribution," covering work associated with EGSI's competitive
17 energy services such as security lighting, the status of which was
18 uncertain in light of the delay in implementing ROA;
- 19 9. "Docket 24469," which covered work on Docket 24469, *Staff's*
20 *Petition to Determine Readiness for Retail Competition in the*
21 *Portions of Texas Within the Southeastern Reliability Council* and
22 subsequently on Docket 25089, *Market Protocols for the Portions of*
23 *Texas Within the Southeastern Electric Reliability Council*;

1 10. "2003 Rate Case," which covers work performed on preparing a
2 distribution utility rate case; and

3 11. "Appeal of Docket 24230" involved work on the Cities' appeal of the
4 Commission's final order in Docket 24230, *Application of Entergy*
5 *Gulf States, Inc. on Behalf of Entergy Solutions Select Ltd. For*
6 *Approval of Price to Beat Rates in Compliance with Subst. R.*
7 *25.41(f)(1)(C).*

8

9 Q. DOES EGSi SEEK TO RECOUP ALL FEES AND EXPENSES PAID TO
10 BICKERSTAFF THAT ARE REFLECTED IN THE INVOICES YOU
11 REVIEWED?

12 A. No. There are several matters which EGSi has adjusted out, and those
13 are noted in the second column of Exhibit JKT-4. For example, see the
14 first invoices at bates pages 536-550 "Excludes Miscellaneous (538-540);
15 Legislation (541); 1998 Rate Case (541); and Docket 16705 Refund (541-
16 544)." The dollar amounts associated with those excluded matters are *not*
17 reflected on Exhibit JKT-4. In addition, some of the invoices I reviewed
18 were duplicates and I have listed those at the end of Exhibit JKT-4.
19 Finally, EGSi also sent to me invoices that covered work performed prior
20 to June 1, 1999 and EGSi is not seeking to recover the costs for that work
21 in this proceeding. Those invoices are also listed at the end of Exhibit
22 JKT-4.

23

1 Q. DID YOU REVIEW ANY MATERIALS OTHER THAN THE INVOICES IN
2 PREPARING YOUR TESTIMONY?

3 A. Yes. As I've previously testified, I examined in varying levels of detail, the
4 docket sheets and particular filings (orders, pleadings, discovery matters)
5 in the numerous PUC proceedings listed above in order to ascertain the
6 necessity for work performed. Many of the Bickerstaff attorneys who
7 performed work reflected on these invoices are no longer with that firm,
8 and the firm is no longer representing EGSi. However, Mr. Steve Neinast,
9 formerly a partner at Bickerstaff, is now in-house counsel with EGSi and
10 Mr. Steve Fogel, also formerly a partner at Bickerstaff, is now a solo
11 practitioner engaged by EGSi on this matter. I therefore discussed with
12 Messrs. Neinast and Fogel some of the issues that impacted the costs of
13 services provided by Bickerstaff. I also explored with those same
14 attorneys the division of labor within the firm and among other firms on
15 some of the matters.

16

17 Q. DID YOU PREPARE A SUMMARY OF THE BICKERSTAFF INVOICES
18 THAT YOU REVIEWED?

19 A. Yes. It is attached as Exhibit JKT-4.

20

21 Q. PLEASE EXPLAIN HOW EXHIBIT JKT-4, THE SUMMARY OF THE
22 BICKERSTAFF INVOICES, IS ARRANGED.

1 A. The summary is in matrix form and is presented in order by the invoice
2 date, which is shown in the first column. The second column of Exhibit
3 JKT-4 indicates the bates range where the invoice can be found and the
4 matters that are excluded from EGSI's request for recoupment, with the
5 bates range of the excluded matters indicated parenthetically. The third
6 column identifies the dates of service for the invoice as a whole, and the
7 fourth column indicates the matter name and the bates range within the
8 invoice where the time entries and expenses for that matter can be found.
9 The fifth, sixth, and seventh columns identify, in turn, the fees charged for
10 the matter, total disbursements for the matter, and the combined total of
11 fees and disbursements for each matter. Any disallowances I am
12 recommending are noted in the fees, disbursements, and total columns.
13 The final column contains notes explaining, as applicable, disallowances
14 recommended by me with an explanation of the reason therefore, and
15 items of particular interest, including time entries in excess of 12.0 hours
16 per day.

17

18 Q. WHAT CAN YOU TELL US ABOUT THE HOURLY RATES CHARGED
19 BY BICKERSTAFF ATTORNEYS AND OTHER TIME BILLERS?

20 A. As reflected on the earliest invoices in 1999, the Bickerstaff attorneys'
21 hourly rate was a blended rate of \$165. The sole exception to this was
22 Ms. Nancy L. Leshikar, who was a contract attorney at that time and her
23 rate was \$180 per hour. Bickerstaff represented EGSI for many years in a

1 variety of administrative cases before this Commission. Before the start of
2 the TTC cost period, EGSi and Bickerstaff negotiated a blended rate
3 (\$165 per hour) to be applied to various EGSi matters. A blended rate is
4 the rate charged for all attorney time regardless of the timebiller. The
5 \$165 per hour rate was the blended rate throughout 1999 and most of
6 2000. Beginning with the December 29, 2000 invoice, EGSi and
7 Bickerstaff no longer used a blended rate. Instead, the hourly rate for
8 most Bickerstaff attorneys, including Ms. Leshikar, increased to \$195.
9 The exceptions to this rate were John Donisi and Randall Glenn, whose
10 hourly rate was \$150, and Brad Young, whose hourly rate was \$125.
11 Beginning with the January 2002 invoice, the hourly rates for Bickerstaff
12 partners, including Messrs. Neinast and Davison Grant and Ms. Katie
13 Bond, increased to \$210.

14

15 Q. DID YOU FORM AN OPINION CONCERNING THE REASONABLENESS
16 OF THE HOURLY RATES CHARGED BY BICKERSTAFF TO EGSi FOR
17 THE MATTERS INCLUDED IN THE INVOICES YOU REVIEWED?

18 A. Yes. In my opinion, the hourly rates charged by Bickerstaff on the EGSi
19 matters which I reviewed were reasonable, considering the expertise and
20 experience of legal counsel and their staff, and the rates are comparable
21 to rates charged during the same time frame by other lawyers in Texas
22 who represent utilities in proceedings before the Commission. Bickerstaff
23 has a long-standing relationship with EGSi, including representing Entergy

1 in its merger with GSU and two base rate cases before the start of the
2 TTC cost period. In my experience, the rates for each attorney for any
3 particular matter are based upon consideration of the experience and
4 expertise of the attorney, the length of the relationship with the client, the
5 nature of the work, the status of the client, and the current and anticipated
6 workloads of the attorneys. In many of the matters reflected on the
7 Bickerstaff invoices which I reviewed, EGSI carried a significant burden of
8 proof and work often had to be performed within a relatively compressed
9 timeframe required by PURA.

10

11 Q. DID YOU FIND ANY INSTANCE IN WHICH A TIME-BILLER BILLED IN
12 EXCESS OF 12.0 HOURS IN ANY ONE DAY AND IF SO, WHAT DO
13 YOU RECOMMEND BE DONE WITH THE FEES ASSOCIATED WITH
14 THAT TIME?

15 A. Yes. I found billing entries where attorneys with Bickerstaff billed in excess
16 of 12.0 hours in one day in many of the invoices I reviewed, especially in
17 1999 and 2000. These are listed in the "Notes" column of Exhibit JKT-4.
18 Time entries of more than 12.0 hours in a day are cause for closer scrutiny
19 but not necessarily disallowance. There is no doubt that the time entries
20 accurately reflect time actually spent on the work described in the
21 invoices. A higher standard is applied to time entries reflecting 12.0+
22 hours per day, which should occur only in extraordinary circumstances, in
23 order to assess the necessity for the work. Most of the Bickerstaff time

1 entries describe the work performed in sufficient detail to allow me, by
2 cross-referencing the docket sheets for the particular matters, to satisfy
3 myself that the long hours were necessary to represent EGSI's interests in
4 the proceedings indicated. However, there were some time-billers who
5 provided only a minimal amount of information about the work they were
6 performing and in those instances, where the time entry exceeded 12.0
7 hours in a day, I recommend that the fees associated with hours in
8 excess of 12.0 hours be disallowed. In my experience in preparing for and
9 appearing at hearings, and especially when representing the party with the
10 burden of proof, it is not uncommon for the attorneys and the witnesses to
11 work in excess of 12.0 hours on some days in order to either prepare a
12 case with testimony for filing, meet deadlines for responding to discovery,
13 review and file objections to other parties' testimony, participate in
14 depositions, prepare rebuttal testimony, or prepare for and attend and
15 represent the client in prehearings and hearings on the merits. I have
16 listed the details associated with each time entry that exceeded 12.0 hours
17 in a day on Exhibit JKT-4. Based upon my review of the work performed
18 in the proceedings indicated, I recommend numerous disallowances for
19 those Bickerstaff time entries that exceeded 12.0 hours per day for which
20 insufficient billing detail was provided to meet the higher standard of
21 review for long hours, as explained in the attached Exhibit JKT-4.

22

1 Q. DID YOU FIND ANY INSTANCES IN WHICH AN HOURLY RATE WAS
2 CHARGED THAT WAS HIGHER THAN THE AGREED-UPON RATE?

3 A. No.
4

5 Q. DID YOU FIND ANY INSTANCES IN WHICH THE COMPANY WAS
6 CHARGED MORE THAN ONCE FOR A SERVICE?

7 A. No.
8

9 Q. WHAT DID YOU LEARN ABOUT THE OUT-OF-POCKET EXPENSES
10 SUCH AS TRAVEL EXPENSES AND COPYING CHARGES?

11 A. Bickerstaff charged \$0.05 per page for copying during the time period
12 covered by these invoices. In my opinion, that is at the low end of the
13 range of reasonableness for copying charges collected by law firms for
14 utility matters during the time period covered by these invoices. As to
15 travel-related expenses, the Bickerstaff invoices that EGSi provided to me
16 do not contain detailed documentation or itemization of disbursement
17 items. So, for example, on the October 21, 1999 invoice at bates 441
18 there are 14 lines showing totals for categories of disbursements such as
19 copying charges, court reporter, delivery service, and travel expense. In
20 my experience, travel-related expenses are given closer scrutiny by the
21 Commission than are other disbursements such as copying costs.
22 Several of the Review Criteria which I listed previously relate to travel
23 expenses, including disallowance of first class air, meals in excess of \$25

1 per day, hotel movies, etc. With respect to the Bickerstaff disbursements,
2 I was able to confirm from the time entries in most instances that travel
3 actually occurred, but with nothing more than a single line showing total
4 travel expenses, I could not determine if the expenditure included non-
5 commercial aircraft, first-class air travel, limousine services, hotel movies,
6 hotel laundry/dry cleaning, alcoholic drinks, or meals costing in excess of
7 \$25.00 per person per meal. In the absence of any detailed
8 documentation for travel or meals, but with evidence of travel having
9 occurred, and as discussed below, the need for travel being evident, I
10 have recommended disallowance of one-half of Bickerstaff's meal and
11 travel expenditures. These disallowances are reflected on Exhibit JKT-4.

12

13 Q. HOW DID YOU DECIDE THAT DISALLOWANCE OF ONE-HALF OF
14 BICKERSTAFF'S MEAL AND TRAVEL DISBURSEMENTS WAS
15 REASONABLE?

16 A. The 50% reduction is subjective and the Commission may find it is too
17 sweeping and pick another, smaller, percentage. In my opinion, it would
18 not be reasonable to disallow all meal and travel expenditures when it is
19 clear that costs for those types of disbursements were actually incurred,
20 and it was necessary to incur them for the reasons discussed below. At
21 the same time, without any documentation that the disbursements
22 excluded luxury items which are not recoverable from ratepayers, a full
23 recovery would not be reasonable. My recommendation to disallow 50%

1 of travel and meals means that EGSI's shareholders will bear one-half of
2 the cost of Bickerstaff's undocumented disbursements and the ratepayers
3 will bear the remaining one-half of those costs.

4 I do not suggest, however, that in future cases when the
5 Commission finds that certain types of costs must be incurred such as
6 travel or lodging but the expense documentation provides insufficient
7 detail, that the standard disallowance should be as high as 50%. That
8 percentage is at the top end of range that should be imposed for
9 insufficient documentation on costs that obviously were incurred for a
10 legitimate purpose. Although I have used 50%, the Commission certainly
11 has the authority and the discretion to determine that a disallowance of
12 10% or 25% would better serve the statutory standard and strike a better
13 balance between ratepayers and shareholders.

14

15 Q. DID YOU UNDERTAKE ANY FURTHER REVIEW OF OUT-OF-POCKET
16 EXPENSES?

17 A. Yes. I examined the expenses claimed by Bickerstaff to determine
18 whether the incurrence of any expense was unnecessary.

19

20 Q. DID YOU FIND ANY INSTANCE OF UNNECESSARY EXPENSES?

21 A. No. I found that travel was clearly associated with the need to confer and
22 meet with the client or its support services affiliate, whose corporate
23 headquarters are located in New Orleans, Louisiana. Travel is reasonably

1 expected and necessary in matters in which the law firm, company, and
2 consultants reside in different cities. With respect to photocopy, telephone
3 charges, and other out of pocket expenses, I found nothing that would
4 lead me to believe that Bickerstaff was billing an excessive number of
5 photocopies, or for long distance calls. I concluded that expenses
6 associated with copies, long distance, facsimiles, and the like were
7 reasonable.

8

9 Q. ARE THERE ANY TIME-BILLERS AT BICKERSTAFF OTHER THAN
10 ATTORNEYS THAT WERE INVOLVED IN ANY OF THE
11 PROCEEDINGS?

12 A. Yes. Bickerstaff employs paralegals who billed time to EGSI as reflected
13 on the invoices I reviewed. The hourly rates for those paralegals fell
14 within the range of \$65 to \$75 per hour. During the TTC cost period,
15 Bickerstaff used its paralegals for the following tasks because it was more
16 cost effective to have a paralegal perform the work than to have an
17 attorney perform the task: research PUC docket files; assist EGSI with
18 complying with PUC filing and service requirements; document and file
19 management; assist with the preparation of briefs and motions in
20 contested proceedings and comments in rulemaking projects; coordinate
21 the logistics and organization of contested case preparation; and assist
22 with the preparation for hearing. I examined each paralegal's time entries
23 for the same criteria I employed to review the attorneys' billable entries.

1 Based upon my review of these Bickerstaff time-billers other than
2 attorneys, I conclude that their assistance was necessary to the
3 representation of EGSI in the matters involved, added economic efficiency
4 to the legal representation, and was reasonable and necessary.

5

6 Q. ARE THE HOURLY RATES CHARGED BY BICKERSTAFF FOR
7 PARALEGALS REASONABLE?

8 A. Yes. The hourly rates for the Bickerstaff paralegals is comparable to rates
9 charged by other firms for the services of paralegals, are neither high nor
10 out-of-the-ordinary and are, in my opinion, quite reasonable.

11

12 Q. ARE THE HOURLY RATES FOR THE BICKERSTAFF ATTORNEYS
13 REFLECTIVE OF THE GOING RATE FOR ATTORNEYS IN AUSTIN
14 INVOLVED IN THE PRACTICE OF UTILITY LAW AT THE TIMES
15 INDICATED ON THE INVOICES?

16 A. Yes. The hourly rates charged by each of the
17 Bickerstaff attorneys previously discussed, and as reflected in the invoices
18 I reviewed, are well within the range of rates charged by lawyers with
19 comparable experience in proceedings before this and other utility
20 regulatory commissions. Based upon the level of expertise of each of the
21 attorneys who worked a significant amount of time on this matter for the
22 Company, which I describe below, the hourly rates charged by Bickerstaff
23 attorneys are reasonable.

- 1 • Katie Bond has practiced in the area of utility law since the
2 late 1980s and in the area of administrative law since the early
3 1980s. She advised Entergy or represented EGSi in utility
4 regulatory matters from 1992 through 2001. Prior to joining
5 Bickerstaff, Ms. Bond was Assistant Attorney General, Antitrust
6 Division, Office of the Attorney General of Texas. During the TTC
7 cost period, Ms. Bond was a partner at Bickerstaff.
- 8 • John Donisi has practiced in the area of public utility law since
9 1999. During the TTC cost period, he was an associate at
10 Bickerstaff. Prior to joining that firm, Mr. Donisi served as: Special
11 Assistant to the Governor of Texas; Policy Director, Policy Council,
12 Office of the Governor of Texas; General Counsel, Jurisprudence
13 Committee of the Texas Senate; and Chief of Staff to State Senator
14 Rodney G. Ellis.
- 15 • Stephen Fogel has practiced in the areas of public utility law and
16 administrative law in Texas since 1991. Before that, he practiced in
17 those areas in the states of Florida (1981 – 1986) and Illinois (1986
18 – 1991). Mr. Fogel is board certified in Administrative Law by the
19 Texas Board of Legal Specialization (1996). Prior to joining
20 Bickerstaff, Mr. Fogel was an attorney for the Offices of Public Utility
21 Counsel in the states of Texas, Illinois, and Florida. He was a
22 partner at Bickerstaff during the period 1999 through March 2004,
23 and has been a solo practitioner since that time.

- 1 • Randall M. Glenn was an associate at Bickerstaff during much of
2 the TTC cost period. Mr. Glenn has an accounting background and,
3 prior to joining Bickerstaff, worked on utility regulatory accounting
4 issues for a large, multi-state electric utility system. In March 2004,
5 Mr. Glenn left Bickerstaff Heath to become an associate at Jackson
6 Walker, L.L.P.
- 7 • Davison W. Grant is an experienced practitioner in the area of
8 public utility law. For the years 1971 through 1989, he practiced law
9 in New York, New York and represented electric and gas utilities on
10 utility regulatory issues. Since 1989, he has practiced in Austin and
11 has represented, among others, the operating companies of the
12 former Central and South West system as well as EGSi. He was
13 with Bickerstaff from September 2001 through mid-2004.
- 14 • Andrew Kever has practiced in the areas of public utility law and
15 administrative law for over twenty years, and advised Entergy or
16 represented EGSi during the period 1992 through November 2000.
17 He is board certified in Administrative Law by the Texas Board of
18 Legal Specialization. Prior to joining Bickerstaff, Mr. Kever served
19 as Counsel to the Governor of Texas and as Special Assistant to
20 the Attorney General of Texas. He was a partner in Bickerstaff from
21 the start of the TTC cost period through 2000, when he took a leave
22 of absence to serve as general counsel for a Texas
23 telecommunications company.

- 1 • Nancy L. Leshikar had practiced in the area of public utility law for
2 over twenty years when she retired in 2001. Prior to joining
3 Bickerstaff in 1998, Ms. Leshikar was Staff Counsel for the
4 Commission's Office of General Counsel and was a partner in a
5 Texas law firm that represented the operating companies of the
6 former Central and South West system in utility matters before the
7 Commission. Ms. Leshikar was a contract attorney during her
8 tenure at Bickerstaff.
- 9 • Steven H. Neinast has practiced in the area of public utility law
10 since 1981 in both public and private settings. Prior to joining
11 Bickerstaff in 1999, Mr. Neinast was Director, Office of Policy
12 Development for the Commission and Staff Counsel for the FERC.
13 In addition to that experience, Mr. Neinast has represented public
14 utilities as a private counsel. For the years 2000 through 2002, Mr.
15 Neinast was a partner with Bickerstaff. In 2002, he left Bickerstaff
16 to become an in-house counsel with Entergy Services, Inc. ("ESI").
- 17 • Carolyn E. Shellman has practiced in the areas of public utility law
18 and administrative law for over twenty-five years. She advised
19 Entergy or represented EGSI on utility regulatory matters during the
20 period 1992 through 1999, when she resigned from Bickerstaff.
21 Prior to joining Bickerstaff, Ms. Shellman was an Administrative Law
22 Judge for the Commission's Hearings Division. Currently, Ms.
23 Shellman is General Counsel for ERCOT.

1

2 Q. BASED UPON YOUR REVIEW OF THE BICKERSTAFF INVOICES, DO
3 YOU HAVE AN OPINION AS TO THE REASONABLENESS AND
4 NECESSITY OF EGSi'S EXPEDITURES PAID TO THAT LAW FIRM?

5 A. Yes. In my opinion, the fees and expenses for Bickerstaff legal services
6 for which EGSi seeks recovery in this case, less the disallowances
7 reflected on Exhibit JKT-4, are reasonable and necessary and EGSi
8 should be allowed to recoup them as provided for under PURA § 39.454.

9

10 C. Gulf States Utilities Steering Committee

11 Q. DID YOU REVIEW THE GSU STEERING COMMITTEE EXPENSES?

12 A. Yes. My summary of the invoices I reviewed is reflected in the matrix
13 attached to my testimony as Exhibit JKT-5.

14

15 Q. IN GENERAL, WHAT ARE THE GSU STEERING COMMITTEE
16 EXPENSES?

17 A. The GSU Steering Committee is a group of cities in the EGSi service area
18 that have participated in various PUC dockets involving EGSi including
19 EGSi's rate cases and transition to competition cases. Collectively, these
20 municipalities were called the "Cities." Legal counsel and the consultants
21 for the Cities sent their invoices for the work they did in those cases to the
22 GSU Steering Committee. The GSU Steering Committee would then

1 forward the invoices to EGSi for payment. EGSi would pay the Cities'
2 legal counsel and consultants directly.

3

4 Q. WHY DID EGSi PAY THE CITIES' LEGAL COUNSEL AND
5 CONSULTANTS?

6 A. Under PURA § 31.006, the governing body of a municipality participating
7 in a ratemaking proceeding may engage rate consultants, accountants,
8 auditors, attorneys, and engineers to: conduct investigations, present
9 evidence, and advise and represent the governing body; and assist the
10 governing body with litigation before the commission. PURA § 33.023
11 states that the public utility involved in the proceeding shall reimburse the
12 municipality for the reasonable cost of those services. The Cities have
13 routinely intervened and participated fully in EGSi's cases before this
14 Commission. The Cities have also routinely requested reimbursement for
15 the expenses associated with participating in those dockets. The Cities'
16 and EGSi's frequent interaction with one another led to the procedure that
17 was followed with regard to each of the invoices I reviewed in this group,
18 whereby the Cities, through the Steering Committee, would forward their
19 attorneys' and consultants invoices to EGSi for direct payment.

20

21 Q. HOW DID YOU REVIEW THE GSU STEERING COMMITTEE
22 EXPENSES?

1 A. As a general rule, utilities do not question municipal rate case expenses
2 and the invoices presented to the utility are paid in good faith. For
3 purposes of this docket, however, I reviewed the invoices for the GSU
4 Steering Committee in the same manner that I reviewed the rate case
5 expenses for professionals hired directly by EGSI.

6 With respect to fees, I reviewed the hourly rate charged by each
7 timekeeper in accordance to the *El Paso* standards, set out above, to
8 evaluate whether or not the rates were consistent with market rates for
9 timekeepers with similar experience participating in similar proceedings. I
10 then reviewed the time spent by each timekeeper for the work performed.
11 This was done to verify that the time spent was reasonable with respect to
12 the work product and that the work was necessary or had a direct
13 application or benefit to the proceeding.

14 With respect to expenses, I reviewed the invoices to confirm that
15 common expense items such as copy charges, fax charges, and delivery
16 charges were consistent with market rates for similar expenses. I also
17 reviewed expenses to ensure that costs associated with "luxury" items or
18 services such as luxury hotels, first class airfare, alcohol, or meals over
19 \$25 per person were not included in the invoices. And finally, I verified
20 that expenses for personal items such as laundry and dry cleaning were
21 not included.

22

1 Q. WERE THE CITIES' FEES AND EXPENSES PAID BY EGSi WHICH YOU
2 EXAMINED REASONABLE?

3 A. Yes. The vast majority of the legal work performed on the Cities' behalf
4 was done by Ms. Barbara Day, a very experienced, well known, and
5 established utility law lawyer who had represented the Cities for a number
6 of years. Her rate of \$175 per hour was consistent with rates charged to
7 governmental entities for similar work during the time period she was
8 billing. Her utility and administrative law experience, as well as her
9 familiarity with both the Cities and EGSi, allowed her to complete the work
10 in an efficient manner.

11 Ms. Day was from time to time joined by Don Butler, Walter
12 Washington, and Charmaine Skillman who all billed at the same \$175
13 hourly rate as Ms. Day. These attorneys, each of whom I have known for
14 many years, are well-established utility lawyers with roughly the same
15 experience level as Ms. Day. Only two attorneys not affiliated with Ms.
16 Day appear on the invoices to the GSU Steering Committee: Harry P.
17 Wright, who represented the City of Port Neches and billed at \$165 to
18 \$175 per hour, and H.D. Pate, who represented the City of Bridge City at
19 \$100 per hour. Although Mr. Wright and Mr. Pate had only minimal
20 involvement with these cases, their billing rates are reasonable and their
21 total invoices are consistent with their limited involvement.

22 Ms. Day was assisted by various consultants including Michael
23 Arndt with Arndt & Associates, Steven Andersen of Economics & Policy

1 Analysis, Inc., Richard Hubbard of Hubbard Technical Consulting, and
2 Daniel Lawton and Jack Pous of Diversified Utility Consulting, Inc. All of
3 these individuals are experienced consultants and have participated in
4 numerous PUC proceedings. Given their experience levels, the rates they
5 charged the Cities were consistent with the market hourly rates at the time
6 the services were performed. Specifically, the hourly rates for these
7 individuals were as follows: Steven Andersen, \$145; Michael Arndt, \$75;
8 Richard Hubbard, \$130; Daniel Lawton, \$150; and Jack Pous, \$150.

9 In my opinion, the fees for each of the attorneys and consultants
10 who billed for their services on these matters are reasonable based upon
11 their experience and expertise, and the rates are comparable to rates
12 charged by other lawyers and consultants in Texas who represent clients
13 in proceedings before the Commission.

14

15 Q. WERE THERE ANY QUESTIONABLE EXPENSES?

16 A. No. The expenses were both reasonable and necessary to the Cities'
17 participation in the cases.

18

19 Q. IS EGSI SEEKING TO RECOVER THE ENTIRE AMOUNT IT PAID ON
20 BEHALF OF THE GSU STEERING COMMITTEE DURING THE TTC
21 COST PERIOD?

22 A. No. During the TTC cost period, EGSI paid much more on behalf of the
23 EGSI Steering Committee than is being sought to be recovered in this

1 docket. However, some of this larger amount includes payments for
2 dockets other than TTC matters, which the Company has decided are not
3 appropriate for recovery in this docket.

4

5 Q. IN YOUR OPINION, SHOULD THE COMMISSION APPROVE
6 RECOVERY OF THE FEES EGSI PAID TO REIMBURSE THE CITIES?

7 A. Yes. As I stated previously, the utility is responsible for the reasonable
8 rate case expenses of a municipality participating in a rate case. The
9 GSU Steering Committee expenses for which the Company seeks
10 recovery in this case were reasonable and necessary expenditures made
11 by EGSI in proceedings arising under Chapter 39 of PURA and
12 accordingly, EGSI should be allowed to recoup the amount reflected on
13 Exhibit JKT-5 as provided for under PURA § 39.454.

14

15 D. All Other Attorneys and Legal Vendors

16 Q. WHAT IS THE NEXT CATEGORY OF LEGAL VENDORS' INVOICES
17 THAT YOU REVIEWED?

18 A. The remainder of this Section III addresses invoices from 19 law firms or
19 legal vendors utilized by EGSI during the TTC period.

20

21 Q. WHAT STANDARDS OF REVIEW DID YOU APPLY TO THESE OTHER
22 ATTORNEYS AND LEGAL VENDORS?

1 A. I applied the same standards discussed earlier in my testimony.
2 Specifically, I formed an opinion on the reasonableness and necessity of
3 expenditures under the standards enunciated in the *El Paso* case. I also
4 applied the criteria for "luxury" items to determine if expenses were not
5 allowed to be passed through to ratepayers. In order to determine the
6 reasonableness of the hourly rates for each attorney for any particular
7 matter I took into consideration the experience and expertise of the
8 attorney, the length of the relationship with the client, the nature of the
9 work, the status of the client, the geographic location of the firm, and the
10 current and anticipated workloads of the law firm at the time of the
11 engagement, if known.

12

13 (1) Adams & Reese, L.P.

14 Q. DID YOU REVIEW INVOICES FOR SERVICES PROVIDED BY ADAMS
15 & REESE?

16 A. Yes. Adams & Reese is a New Orleans law firm whose invoices can be
17 found at bates pages 9 through 15. They provided services associated
18 with EGSI's business separation plan. As part of the unbundling process,
19 EGSI needed technology to prepare to carry out its functions as a
20 distribution utility during the pilot project and ultimately during full retail
21 open access. William J. Kelly III, an attorney with Adams & Reese, helped
22 ESI to negotiate a software license and corresponding maintenance and

1 professional services agreements with ICF Technologies. EGSi used this
2 technology to provide the data aggregation, settlement, and billing
3 functions during the pilot and in preparation for full ROA. Mr. Kelly
4 performed this work in November and December 2000 at an hourly rate of
5 \$165. He practices in the areas of contract law and intellectual property
6 law.

7

8 Q. DID YOU HAVE ANY DISALLOWANCES ASSOCIATED WITH THOSE
9 INVOICES?

10 A. No. Mr. Kelly's time entries and the firms' description of expenses satisfy
11 each of the standards and criteria for review listed earlier in my testimony.
12 In my opinion the hourly rates charged were reasonable considering the
13 timeframe in which services were rendered, the expertise of the primary
14 timebillers(s), and the geographic location of the firm. I recommend that
15 EGSi be allowed to recoup all of the costs paid to Adams & Reese
16 pursuant to PURA § 39.454.

17

18 (2) Baker & Botts

19 Q. DID YOU REVIEW INVOICES FOR SERVICES PROVIDED BY BAKER &
20 BOTTTS?

21 A. Yes. EGSi gave me several Baker & Botts invoices to review, which are
22 found at bates pages 18 through 57 and 3894 through 3899.

23